

PERSONNEL BOARD

May 31, 2007

SPECIAL MEETING

Meeting was held Thursday, May 31, 2007, City Council Chambers, County-City Building, Lincoln, Nebraska.

Members present: Ruth Jones, Sarah Jones, Pat Borer, Ed Wimes. Member absent: Maggie Stine. Personnel Department resource staff attending: Karen Eurich.

The meeting was opened at 8:30 a.m. by Chair Ed Wimes.

Agenda Item 1 was the request to create the classification 3665 Senior Public Health Nurse (A14). John Cripe of the Personnel Department explained this class was being created at the request of the Health Department. Seven employees were audited and it was determined that six of those seven employees do not have major supervisory duties; therefore, this new classification is being created for the six employees who do not supervise. The pay range will be the same as the classification the employees are currently in, so there will be no change in salary for those employees. Following discussion, it was moved by Pat Borer and seconded by Sarah Jones to approve the creation of the classification as presented. Motion unanimously carried by roll call vote.

Agenda Item 2 was the request for appeal hearing – Charlene Wisbey — Finance/Communications. Joe Rupp of the City Attorney's Office represented the City and Joy Shiffermiller represented Charlene Wisbey. The proceedings were recorded by Marcy Konzak of J.S. Wurm and Associates and are on file in that office. There were fourteen exhibits offered and accepted into the record, and one exhibit that was to be offered by the City and was objected to by Ms. Shiffermiller that was not offered. Exhibits number six, seven, eight, nine, eleven, and twelve that were offered by Ms. Shiffermiller were objected to by Joe Rupp. Exhibit number thirteen was offered by the City and objected to by Ms. Shiffermiller. Witnesses called: Julie Righter, Charlene Wisbey. Following discussion, it was moved by Ed Wimes and seconded by Pat Borer to uphold the dismissal of Charlene Wisbey. Motion unanimously carried by roll call vote.

Agenda Item 3 was miscellaneous discussion. It was moved by Pat Borer and seconded by Ruth Jones to approve the minutes of the October 19, 2006 meeting. Motion unanimously carried by roll call vote.

There being no further business the meeting adjourned at 10:15 a.m.

The next scheduled meeting is tentatively set for Thursday, June 21, 2007.

Karen Eurich
Personnel Operations Specialist

PC: Joan Ross, City Clerk
Charlene Wisbey
Joy Shiffermiller
Don Herz
Bruce Dart

BEFORE THE CITY OF LINCOLN PERSONNEL BOARD

IN THE MATTER OF THE APPEAL
HEARING OF CHARLENE WISBEY

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DECISION

NOW, on the 31st day of May, 2007, this matter came before the City of Lincoln Personnel Board on the request for an appeal hearing of Charlene Wisbey regarding the termination of her employment as an Emergency Services Dispatcher II for the City of Lincoln. Charlene Wisbey was represented by Joy Shiffermiller, attorney at law, and the City of Lincoln Finance Department Emergency Communications -911 was represented by Assistant City Attorney Joe Rupp.

Evidence was introduced, testimony offered by the City and the Appellant, exhibits were submitted, oral arguments were heard, and the matter was submitted to the Board.

Board Chair Wimes moved to deny the appeal, and upon a vote of 4-0, the appeal was denied.

In support of its decision, the Board makes the following findings and conclusions:

1. The Appellant was hired on June 24, 1979, by the City of Lincoln to work in the City of Lincoln Administrative Services Department Communications Center as a Police Dispatcher. The Appellant was continuously employed at the Communications Center and during the course of her employment she was advanced to the position of Emergency Services Dispatcher II.
2. The Appellant's employment as an Emergency Service Dispatcher II was terminated by the City of Lincoln effective April 6, 2007, as set forth in Exhibit 10, due to the fact that Dr. Eli Chesen found her unfit for duty.

3. That on or about February 24, 2007, the Appellant submitted an application for Family Medical Leave. The Appellant included with her FMLA application a Medical Certification Statement from Dr. Pothuloori, Appellant's treating physician. The Medical Certification Statement indicated Appellant suffers from recurring cycle depression, and anxiety which interferes with her sleep, energy level, motivation, and concentration.

4. Upon review of the Medical Certification, the City was concerned with Appellant's ability to perform the essential functions of her job. Appellant was employed in an emergency services position where the ability to concentrate and focus on the job are important attributes. Appellant's job description and job classification are set forth in Exhibits 13 and 14 respectively.

5. To determine Appellant's ability to perform the essential functions of her position, the City sent Appellant to Dr. Eli Chesen for a fitness for duty exam. This fitness for duty exam was performed on March 22, 2007. An employer may require a fitness for duty exam when an employer has a reasonable belief, based on objective evidence, that an employee's ability to perform the essential functions of the job may be impaired by a medical condition. In addition, under the Lincoln Municipal Code § 2.76.510, the director or department head may at any time require an employee to be examined by a physician or psychiatrist for the purpose of determining the employee's ability to perform the duties of their position.

6. On or about March 28, 2007, the City received Dr. Eli Chesen's report regarding the results of Appellant's fitness for duty exam. Dr. Chesen's report concluded that Appellant is not "fit for duty as described in her job description, especially as related to tiredness, her ability to concentrate and her ongoing propensity to likely miss work" as set forth in Exhibit

7. Based upon Dr. Eli Chesen's finding that the Appellant was not fit for

duty, the City placed Appellant on Administrative Leave with Pay on March 29, 2007, as set forth in Exhibit 5.

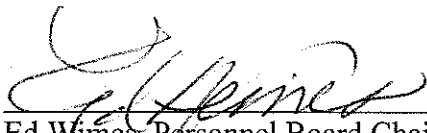
8. A meeting was held on April 2, 2007, to discuss the results of Appellant's fitness for duty exam. Appellant was present with her attorney, Joy Shiffermiller. At that time, Appellant was informed that her employment was terminated based upon her being found unfit for duty.

9. Based upon the evidence in record, the Board concludes that (a) the City has met all the procedural steps necessary to justify the termination of Appellant's employment; (b) the City had sufficient evidence to question Appellant's ability to perform the essential functions of the job; (c) the City properly required Appellant to submit to a fitness for duty exam; and (d) there is substantial evidence to establish that the termination of the Appellant's employment was for cause.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Appeal of the termination of the employment of Charlene Wisbey be and the same is hereby denied.

Dated this 18th day of June, 2007.

CITY PERSONNEL BOARD

By: 
Ed Wimes, Personnel Board Chair